

By: Menéndez

S.B. No. 181

A BILL TO BE ENTITLED

AN ACT

relating to civil liability for bullying of a child.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 100B to read as follows:

CHAPTER 100B. LIABILITY FOR CERTAIN BULLYING OF CHILD

Sec. 100B.001. DEFINITIONS. In this chapter:

(1) "Bullying communication" means a written or oral expression or expression by means of electronic communication:

(A) that is a communication:

(i) with respect to which the individual making the communication acts intentionally and with malice;

(ii) that is extreme and outrageous or is part of multiple communications directed by a single individual toward a single recipient that, when taken together, are extreme and outrageous; and

(iii) with respect to which the actions of the individual making the communication caused the recipient to suffer severe emotional distress; or

(B) in which the individual making the communication:

(i) urges the recipient to commit or attempt to commit suicide;

(ii) threatens to make available to any

third party, whether or not specified, by electronic communication or otherwise, an indecent photograph of the recipient; or

(iii) threatens bodily injury to the recipient or a member of the recipient's family.

(2) "Claimant" means a party seeking to recover damages under this chapter, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff, and includes a party seeking recovery of damages under this chapter on behalf of another person and the person on whose behalf the damages are sought.

(3) "Defendant" includes any party from whom a claimant seeks recovery of damages under this chapter and includes a person from whom a claimant seeks recovery under Section 100B.005 and the child who engaged in the actionable bullying that is the subject of the action in which recovery is sought.

(4) "Electronic communication" means a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted wholly or partly by a wire, radio, electromagnetic, photoelectronic, or photo-optical system including through the use of a cellular or other type of telephone, a computer, a pager, a camera, electronic mail, instant messaging, text messaging, a social media application, or an Internet website.

(5) "Family" has the meaning assigned by Section [71.003](#), Family Code.

(6) "Interactive service" means an information service, system, wireless telephone and text message service, or access software provider that provides or enables electronic

1 communications through computer or wireless telephone access by
2 multiple users to a computer server or wireless telephone network,
3 including a system that provides access to the Internet or wireless
4 telephones.

5 Sec. 100B.002. ACTIONABLE BULLYING. A person engages in
6 actionable bullying for the purposes of this chapter if the person
7 directs two or more bullying communications toward a single
8 recipient who, at the time of the communications, is younger than 18
9 years of age.

10 Sec. 100B.003. LIABILITY. A defendant is liable to a
11 claimant as provided by this chapter if the claimant shows that the
12 defendant engaged in actionable bullying directed toward the
13 claimant.

14 Sec. 100B.004. DAMAGES. (a) A claimant who prevails in a
15 suit under this chapter may recover actual damages for all
16 physical, mental, or emotional injury caused by, resulting from, or
17 arising out of the actionable bullying that is the subject of the
18 suit. The claimant may recover actual damages for mental anguish
19 even if an injury other than mental anguish is not shown.

20 (b) Except as provided by Subsection (c), in addition to
21 damages awarded under Subsection (a), a claimant who prevails in a
22 suit under this chapter may recover:

23 (1) exemplary damages; and

24 (2) court costs and reasonable attorney's fees.

25 (c) Instead of recovering exemplary damages under
26 Subsection (b), a claimant who prevails in a suit under this chapter
27 may elect to double the amount that would otherwise be awarded under

Subsection (a) if the claimant shows that:

(1) the defendant used an interactive service to transfer electronic communications to the claimant that constituted actionable bullying; and

(2) the defendant knew that two or more other persons were using that interactive service to transfer electronic communications that constituted actionable bullying as to the claimant within 24 hours of each transfer by the defendant described by Subdivision (1).

Sec. 100B.005. PARENTAL RESPONSIBILITY. A parent or other person who has the duty of control and reasonable discipline of a child who engages in actionable bullying directed toward the claimant is liable to the claimant for:

(1) the lesser of:

(A) damages recoverable by the claimant under Section 100B.004, including exemplary damages or multiplied damages, as applicable; or

(B) \$50,000; and

(2) court costs and reasonable attorney's fees.

Sec. 100B.006. INJUNCTIVE RELIEF. If a defendant is found liable under this chapter, a court may order any injunctive relief sought by the claimant that the court determines is appropriate under the circumstances.

Sec. 100B.007. DEFENSE. It is a defense to liability under this chapter that the defendant was engaged in conduct that constituted a constitutionally protected exercise of the defendant's rights to free speech.

1 Sec. 100B.008. CAUSE OF ACTION CUMULATIVE. The cause of
2 action created by this chapter is cumulative of any other remedy
3 provided by common law or statute.

4 Sec. 100B.009. SEVERABILITY; CONSTRUCTION. (a) Every
5 provision of this chapter and every application of the provisions
6 of this chapter are severable from each other as a matter of state
7 law. If any application of any provision of this chapter to any
8 person, group of persons, or circumstances is found by a court to be
9 invalid, the remainder of this chapter and the application of the
10 chapter's provisions to all other persons and circumstances will
11 not be affected. All constitutionally valid applications of this
12 chapter shall be severed from any applications that a court finds to
13 be invalid, leaving the valid applications in force, as it is the
14 legislature's intent and priority that the valid applications be
15 allowed to stand alone. Even if a reviewing court finds a provision
16 of this chapter invalid in a large or substantial fraction of
17 relevant cases, the remaining valid applications shall be severed
18 and allowed to remain in force.

19 (b) This chapter shall be construed, as a matter of state
20 law, to be enforceable up to but no further than the maximum
21 possible extent consistent with federal law and constitutional
22 requirements, even if that construction is not readily apparent, as
23 such constructions that are not readily apparent are authorized
24 only to the extent necessary to save the statute from judicial
25 invalidation.

26 SECTION 2. Chapter 100B, Civil Practice and Remedies Code,
27 as added by this Act, applies only with respect to bullying

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1 communications engaged in on or after the effective date of this
2 Act.

3 SECTION 3. This Act takes effect September 1, 2017.